

written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: *Provided*, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: *Provided further*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: *Provided further*, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under subchapter

II of this chapter or this chapter; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.]; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

[See main edition for text of (d) to (g)]

(As amended Apr. 18, 1990, Pub. L. 101-273, § 1, 104 Stat. 138.)

AMENDMENTS

1990—Subsec. (c)(7)(C). Pub. L. 101-273 added subcl. (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 432, 433, 523, 1002, 1111 of this title; title 18 section 2516; title 26 sections 9702, 9712; title 33 section 917.

CHAPTER 8—FAIR LABOR STANDARDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 251 to 262, 795, 1802 of this title; title 2 section 60k; title 5 section 2105; title 7 sections 2015, 2026, 2029; title 15 sections 1014, 3152; title 38 section 1718; title 41 section 355; title 42 sections 1437l, 3056, 5044, 8009, 8011, 12553.

§ 201. Short title

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-157, § 1(a), Nov. 17, 1989, 103 Stat. 938, provided that: "This Act [enacting section 60k of Title 2, The Congress, amending sections 203, 205 to 208, 213, 214, and 216 of this title, and enacting provisions set out as notes under sections 203 and 206 of this title] may be cited as the 'Fair Labor Standards Amendments of 1989'."

§ 203. Definitions

As used in this chapter—

[See main edition for text of (a) to (l)]

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be

used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

[See main edition for text of (n) to (q)]

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, and agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (C) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons—

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if

the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

[See main edition for text of (t) to (x)]

(As amended Nov. 17, 1989, Pub. L. 101-157, §§ 3(a), (d), 5. 103 Stat. 938, 939, 941.)

AMENDMENTS

1989—Subsec. (m). Pub. L. 101-157, § 5, substituted "in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable minimum wage rate after March 31, 1991," for "in excess of 40 per centum of the applicable minimum wage rate."

Subsec. (r). Pub. L. 101-157, § 3(d), designated first sentence as par. (1), made a separate sentence out of the existing proviso and redesignated c's. (1), (2), and (3) as (A), (B), and (C), respectively, designated second sentence as par. (2), in par. (2) as so designated, redesignated existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and, in subpar. (A) as so redesignated, substituted "school is operated" for "school is public or private or operated".

Subsec. (s). Pub. L. 101-157, § 3(a), amended subsec. (s) generally, completely revising definition of "enterprise engaged in commerce or in the production of goods for commerce".

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(e) of Pub. L. 101-157 provided that: "The amendments made by this section [amending this section and section 213 of this title] shall become effective on April 1, 1990."

Section 5 of Pub. L. 101-157 provided that the amendment made by that section is effective Apr. 1, 1990.

PRESERVATION OF COVERAGE

Section 3(b) of Pub. L. 101-157 provided that:

"(1) IN GENERAL.—Any enterprise that on March 31, 1990, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) [amending this section] is not subject to such section shall—

"(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;

"(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

"(C) remain subject to section 12 of such Act (29 U.S.C. 212).

"(2) VIOLATIONS.—A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206, 207, 212), as the case may be."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 2001, 2611 of this title; title 8 sections 1101, 1186; title 26 section 45B; title 49 section 3101.

§ 205. Special industry committees for American Samoa

(a) Establishment; residents as members of committees

The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees in American Samoa engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under said section to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of American Samoa where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of American Samoa. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 208 of this title.

[See main edition for text of (b) to (d)]

(e) Repealed. Pub. L. 101-157, § 4(a)(3), Nov. 17, 1989, 103 Stat. 939

(As amended Nov. 17, 1989, Pub. L. 101-157, § 4(a), 103 Stat. 939.)

AMENDMENTS

1989—Pub. L. 101-157, § 4(a)(4), substituted "American Samoa" for "Puerto Rico and the Virgin Islands" in section catchline.

Subsec. (a). Pub. L. 101-157, § 4(a)(1), (2), substituted "American Samoa engaged" for "Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged", "American Samoa where" for "such island or islands where", and "American Samoa." for "Puerto Rico and the Virgin Islands."

Subsec. (e). Pub. L. 101-157, § 4(a)(3), struck out subsec. (e) which related to the application of sections 206 and 208 to employees in Puerto Rico or the Virgin Islands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 208 of this title.

§ 206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than \$3.35 an hour during the period ending March 31, 1990, not less than \$3.80 an hour during the year beginning April 1, 1990, and not less than \$4.25 an hour after March 31, 1991;

[See main edition for text of (2)]

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b) of this section, not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint pursuant to sections 205 and 208 of this title. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;

[See main edition for text of (4) and (5); (b)]

(c) Employees in Puerto Rico

(1) The rate or rates provided by subsection (a)(1) of this section shall be applicable in the case of any employee in Puerto Rico who is employed by—

(A) the United States,

(B) an establishment that is a hotel, motel or restaurant,

(C) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

(D) any other industry in which the average hourly wage is greater than or equal to \$4.65 an hour.

(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than \$4.00 but not more than \$4.64, the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) of this section shall apply on April 1, 1994.

(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than \$4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) of this section shall apply on April 1, 1995.

(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than \$4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1996, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) of this section shall apply on April 1, 1996.

[See main edition for text of (d) and (e)]

(f) Employees in domestic service

Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C. 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C. 401 et seq.], or

[See main edition for text of (2)]

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section.

(As amended Nov. 17, 1989, Pub. L. 101-157, §§ 2, 4(b), 103 Stat. 938, 940; Dec. 19, 1989, Pub. L. 101-239, title X, § 10208(d)(2)(B)(i), 103 Stat. 2481.)

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1985, referred to in subsec. (c)(4), is Pub. L. 99-150, Nov. 13, 1985, 99 Stat. 787, which amended sections 203, 207, and 211 of this title and enacted provisions set out as notes under sections 203, 207, 215, and 216 of this title. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101-157, § 2, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "not less than \$2.65 an hour during the year beginning January 1, 1978, not less than \$2.90 an hour during the year beginning January 1, 1979, not less than \$3.10 an hour during the year beginning January 1, 1980, and not less than \$3.35 an hour after December 31, 1980, except as otherwise provided in this section;"

Subsec. (a)(3). Pub. L. 101-157, § 4(b)(1), substituted "pursuant to sections 205 and 208 of this title" for "in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this chapter as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico or the Virgin Islands".

Subsec. (c). Pub. L. 101-157, § 4(b)(2), amended subsec. (c) generally, substituting provisions relating to the application of wage rates under subsec. (a)(1) to employees in Puerto Rico for provisions relating to the superseding of subsec. (a)(1) wage rates by wage orders of a special industry committee for employees in Puerto Rico and the Virgin Islands.

Subsec. (f)(1). Pub. L. 101-239 substituted "209(a)(6)" for "209(g)".

TRAINING WAGE

Section 6 of Pub. L. 101-157 provided that:

"(a) IN GENERAL.—

"(1) AUTHORITY.—Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2)—

"(A) while such employee is employed for the period authorized by subsection (g)(1)(B)(i), or

"(B) while such employee is engaged in on-the-job training for the period authorized by subsection (g)(1)(B)(ii).

"(2) WAGE RATE.—The wage referred to in paragraph (1) shall be a wage—

"(A) of not less than \$3.35 an hour during the year beginning April 1, 1990; and

"(B) beginning April 1, 1991, of not less than \$3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

"(b) WAGE PERIOD.—An employer may pay an eligible employee the wage authorized by subsection (a) for a period that—

"(1) begins on or after April 1, 1990;

"(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

"(3) ends before April 1, 1993.

"(c) WAGE CONDITIONS.—No eligible employee may be paid the wage authorized by subsection (a) by an employer if—

"(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

"(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

"(d) LIMITATIONS.—

"(1) EMPLOYEE HOURS.—During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employ-

ment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

"(2) DISPLACEMENT.—

"(A) PROHIBITION.—No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

"(B) DISQUALIFICATION.—If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

"(c) NOTICE.—Each employer shall provide to any eligible employee who is to be paid the wage authorized by subsection (a) a written notice before the employee begins employment stating the requirements of this section and the remedies provided by subsection (f) for violations of this section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

"(f) ENFORCEMENT.—Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

"(g) DEFINITIONS.—For purposes of this section:

"(1) ELIGIBLE EMPLOYEE.—

"(A) IN GENERAL.—The term 'eligible employee' means with respect to an employer an individual who—

"(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a));

"(ii) has not attained the age of 20 years; and

"(iii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

"(B) DURATION.—

"(i) An employee shall initially be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 90 days at such wage.

"(ii) An employee who has been employed by an employer at the wage authorized by subsection (a) for the period authorized by clause (i) may be employed by any other employer for an additional 90 days if the employer meets the requirements of subsection (h).

"(iii) The total period, as authorized by clauses (i) and (ii), that an employee may be paid the wage authorized by subsection (a) may not exceed 180 days.

"(iv) For purposes of this subparagraph, the term 'employer' means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

"(C) PROOF.—

"(i) **IN GENERAL.—**An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

"(ii) **REGULATIONS.—**The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list

of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

"(2) ON-THE-JOB TRAINING.—The term 'on-the-job training' means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

"(h) EMPLOYER REQUIREMENTS.—An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall—

"(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage,

"(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives and other interested persons,

"(3) keep on file a copy of the training program which the employer will provide such employees,

"(4) provide a copy of the training program to the employees,

"(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and

"(6) send to the Secretary on an annual basis a copy of such notice.

The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

"(i) REPORT.—The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include—

"(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

"(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

"(3) the nature and duration of the training provided under such wage; and

"(4) the degree to which employers used the authority to pay such wage."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 205, 207, 208, 213, 214, 215, 216, 218, 1552, 2617 of this title; title 2 section 60k; title 5 sections 2302, 5343, 5349, 7702; title 7 sections 2015, 2026; title 15 section 1673; title 20 sections 1078-10, 1085; title 21 section 849; title 22 sections 2506, 3905, 3967, 3968, 3969, 4131; title 26 section 45B; title 38 sections 1720, 3485; title 41 section 351; title 42 sections 300e-9, 431, 1437l, 2000e-2, 2753, 3056, 8009, 8011, 9848.

§ 207. Maximum hours

[See main edition for text of (a) to (p)]

(q) Maximum hour exemption for employees receiving remedial education

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

(As amended Nov. 17, 1989, Pub. L. 101-157, § 7, 103 Stat. 944.)

AMENDMENTS

1989—Subsec. (q). Pub. L. 101-157 added subsec. (q).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 211, 213, 214, 215, 216, 216b, 218, 2611, 2617 of this title; title 5 sections 5542, 5543, 5544, 6123, 6128; title 41 sections 35, 355.

§ 208. Wage orders in American Samoa

(a) Congressional policy; recommendation of wage rate by industry committee

The policy of this chapter with respect to industries or enterprises in American Samoa engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in American Samoa engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein, and who but for section 206(a)(3) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title. Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed by such a Committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Investigation of industry condition by industry committee; matters considered

Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest

minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(a)(3) of this title, unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

[See main edition for text of (c) to (f)]

(As amended Nov. 17, 1989, Pub. L. 101-157, § 4(c), 103 Stat. 940; Nov. 15, 1990, Pub. L. 101-583, § 1, 104 Stat. 2871.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-583, which directed the substitution of "unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions" for "unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage" in "section 8(b) (29 U.S.C. 208(b))", was executed by making the substitution in section 8(b) of the Fair Labor Standards Act of 1938, act June 25, 1938, ch. 676, which is classified to subsec. (b) of this section, to reflect the probable intent of Congress.

1989—Pub. L. 101-157, § 4(c)(5), substituted "American Samoa" for "Puerto Rico and the Virgin Islands" in section catchline.

Subsec. (a). Pub. L. 101-157, § 4(c), substituted "American Samoa engaged" for "Puerto Rico and the Virgin Islands engaged", struck out "The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee—

"(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who but for section 206(c) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title, and

"(2) may, from time to time, recommend increases in the incremental increases authorized by section 206(c)(2) of this title."

after "section 206(c) of this title.", substituted "American Samoa engaged" for "Puerto Rico and the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged" and inserted ", and who but for section 206(a)(3) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title".

Subsec. (b). Pub. L. 101-157, § 4(c)(4), substituted "American Samoa a competitive" for "Puerto Rico or in the Virgin Islands a competitive", "American Samoa; except" for "Puerto Rico and the Virgin Islands; except", and "section 206(a)(3) of this title" for "section 206(c) of this title".

§ 209. Attendance of witnesses**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 626, 2616 of this title.

§ 211. Collection of data**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 212, 215, 626, 2616 of this title.

§ 213. Exemptions**(a) Minimum wage and maximum hour requirements**

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

[See main edition for text of (1)]

(2) Repealed. Pub. L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939.

[See main edition for text of (3)]

(4) Repealed. Pub. L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939.

[See main edition for text of (5) to (15); (b) to (j)]

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds \$10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

[See main edition for text of (h) to (j)]

(As amended Nov. 17, 1989, Pub. L. 101-157, § 3(c), 103 Stat. 939.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101-157, § 3(c)(1), struck out par. (2) which related to employees employed by a retail or service establishment.

Subsec. (a)(4). Pub. L. 101-157, § 3(c)(1), struck out par. (4) which related to employees employed by an establishment which qualified as an exempt retail establishment under clause (2) of this subsection and was recognized as a retail establishment in the particular industry notwithstanding that such establishment made or processed at the retail establishment the goods that it sold.

Subsec. (g). Pub. L. 101-157, § 3(c)(2), substituted "provided by paragraph (6) of subsection (a) of this section" for "provided by paragraphs (2) and (6) of subsection (a) of this section" and struck out before period at end ", except that the exemption from sec-

tion 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-157 effective Apr. 1, 1990, see section 3(e) of Pub. L. 101-157, set out as a note under section 203 of this title.

REGULATIONS CONCERNING COMPUTER, SOFTWARE, AND OTHER SIMILARLY SKILLED PROFESSIONALS

Pub. L. 101-583, § 2, Nov. 15, 1990, 104 Stat. 2871, provided that: "Not later than 90 days after the date of enactment of this Act [Nov. 15, 1990], the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6¼ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 216, 218, 795, 1803, 2612 of this title; title 5 sections 5343, 5349; title 42 sections 300e-9, 1437t, 3056, 8009, 8011.

§ 214. Employment under special certificates

[See main edition for text of (a)]

(b) Students

(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

[See main edition for text of (B)]

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title or not less than \$1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in

effect under section 206 of this title or not less than \$1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

[See main edition for text of (4); (c) and (d)]

(As amended Nov. 17, 1989, Pub. L. 101-157, § 4(d), 103 Stat. 941.)

AMENDMENTS

1989—Subsec. (b)(1)(A). Pub. L. 101-157 struck out "(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title)" after "whichever is the higher".

Subsec. (b)(2), (3). Pub. L. 101-157 struck out "(or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title)" after "whichever is the higher".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 215, 721, 795 of this title.

§ 216. Penalties

[See main edition for text of (a) to (d)]

(e) Civil penalties for child labor violations

Any person who violates the provisions of section 212 of this title, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed \$10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—

[See main edition for text of (1) and (2)]

(3) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative

proceeding after opportunity for hearing in accordance with section 554 of title 5, and regulations to be promulgated by the Secretary. Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

(As amended Nov. 17, 1989, Pub. L. 101-157, § 9, 103 Stat. 945; Nov. 5, 1990, Pub. L. 101-508, title III, § 3103, 104 Stat. 1388-29.)

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-508 struck out "or any person who repeatedly or willfully violates section 206 or 207 of this title" after "issued under that section," in first sentence, substituted "not to exceed \$10,000 for each employee who was the subject of such a violation" for "not to exceed \$1,000 for each such violation" in first sentence, inserted after first sentence "Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed \$1,000 for each such violation," substituted "any penalty under this subsection" for "such penalty" wherever appearing except after "appropriateness of", substituted "Except for civil penalties collected for violations of section 212 of this title, sums" for "Sums" in last sentence, and inserted at end "Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury."

1989—Subsec. (e). Pub. L. 101-157 inserted "or any person who repeatedly or willfully violates section 206 or 207 of this title" in introductory provisions and inserted "or a repeated or willful violation of section 215(a)(2) of this title" in par. (3).

CHAPTER 9—PORTAL-TO-PORTAL PAY

§ 255. Statute of limitations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 217, 256, 257, 262 of this title.

CHAPTER 12—DEPARTMENT OF LABOR

Sec.

- 563a. Working capital fund; comprehensive program of centralized services.
- 567. Labor-management dispute settlement expenses.

§ 563a. Working capital fund; comprehensive program of centralized services

There is appropriated for expenses necessary during the fiscal year ending September 30, 1994, and each fiscal year thereafter, for the maintenance and operation of a comprehensive program of centralized services which the Secretary of Labor may prescribe and deem appropriate and advantageous to provide on a reimbursable basis under the provisions of sections 1535 and 1536 of title 31 (subject to prior notice to OMB) in the national office and field: *Provided*, That such fund shall be reimbursed in advance from funds available to agencies, bureaus, and offices for which such centralized services are performed at rates which will